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8 IN THE UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 KAREL SPIKES,

11 Plaintiff,

12 vs.

13 TEPI-NORTE MEX-CITY; FRANCISCO  
14 CHAVEZ; CHRISTINA CHAVEZ; ROBERTO  
BARNET, individually and dba OLD  
15 COTIJAS and DOES 1 THROUGH 10,  
Inclusive,

16 Defendants.  
17

Case No.: 08 CV 0454 H  
(LSP)

**FIRST AMENDED  
CIVIL COMPLAINT**

DEMAND FOR JURY TRIAL  
[F.R.C.P. §38(b); Local  
Rule 38.1]

18 Plaintiff, KAREL SPIKES (hereinafter referred to as  
19 "Plaintiff"), file this cause of action against Defendants TEPI-  
20 NORTE MEX-CITY (hereinafter referred to as "MEX-CITY"),  
21 FRANCISCO CHAVEZ, CHRISTINA CHAVEZ and ROBERTO BARNET  
22 individually and dba OLD COTIJAS (hereinafter referred to as  
23 "OLD COTIJAS") and DOES 1 THROUGH 10, Inclusive, and would show  
24 unto the Court the following:

25 I.

26 **JURISDICTION AND VENUE**

27 1. This Court has original jurisdiction of this civil  
28



1 action pursuant to 28 USC §1331, 28 USC §§1343(a)(3) and  
2 1343(a)(4) for claims arising under the Americans with  
3 Disabilities Act of 1990, 42 USC §12101 et seq. and the Court's  
4 supplemental jurisdiction, 28 USC §1367.

5 2. Venue in this Court is proper pursuant to 28 USC  
6 §§1391(b) and (c).

7 3. Pursuant to 28 USC §1367(a), Plaintiff shall assert  
8 all causes of action based on state law, as plead in this  
9 complaint, under the supplemental jurisdiction of the federal  
10 court. All the causes of action based on federal law and those  
11 based on state law, as herein stated, arose from a common nuclei  
12 of operative fact. That is, Plaintiff was denied equal access  
13 to Defendants' facilities, goods, and/or services in violation  
14 of both federal and state laws and/or was injured due to  
15 violations of federal and state access laws. The state actions  
16 of Plaintiff are so related to the federal actions that they  
17 form part of the same case or controversy. The actions would  
18 ordinarily be expected to be tried in one judicial proceeding.

19 **II.**

20 **THE PARTIES**

21 4. Defendant MEX-CITY is, and at all times mentioned  
22 herein was, a business or corporation or franchise organized and  
23 existing and/or doing business under the laws of the State of  
24 California. MEX-CITY is located at 4988 Imperial Avenue, San  
25 Diego, CA (hereinafter "the subject property".) Plaintiff is  
26 informed and believes and thereon alleges that Defendant MEX-  
27 CITY is, and was, the owner, lessor or lessee of the subject  
28 property and/or the owner and/or operator of the public



1 accommodation located at the subject property.

2       5. Defendant FRANCISCO CHAVEZ is, and at all times  
3 mentioned herein was, an individual residing in and/or doing  
4 business under the laws of the State of California. Plaintiff is  
5 informed and believes and thereon alleges that Defendant  
6 FRANCISCO CHAVEZ is, and at all times mentioned herein was, the  
7 owner, lessor or lessee of the subject property.

8       6. Defendant CHRISTINA CHAVEZ is, and at all times  
9 mentioned herein was, an individual residing in and/or doing  
10 business under the laws of the State of California. Plaintiff is  
11 informed and believes and thereon alleges that Defendant  
12 CHRISTINA CHAVEZ is, and at all times mentioned herein was, the  
13 owner, lessor or lessee of the subject property.

14       7. Defendant ROBERTO BARNET is, and at all times  
15 mentioned herein was, an individual residing within the County  
16 of San Diego and/or doing business as OLD COTIJAS under the  
17 laws of the State of California. OLD COTIJAS was located at  
18 4988 Imperial Avenue, San Diego, CA (hereinafter "the subject  
19 property".) Plaintiff is informed and believes and thereon  
20 alleges that Defendant OLD COTIJAS is, and at all times  
21 mentioned herein was, the owner, lessor or lessee of the  
22 subject property and/or the owner and/or operator of the public  
23 accommodation located at the subject property.

24       8. Plaintiff is informed and believes, and thereon  
25 alleges, that Defendants and each of them herein were, at all  
26 times relevant to the action, the owners, franchisees, lessees,  
27 general partners, limited partners, agents, employees, employers,  
28 representing partners, subsidiaries, parent companies, joint



1 venturers and/or divisions of the remaining Defendants and were  
2 acting within the course and scope of that relationship.  
3 Plaintiff is further informed and believes, and thereon alleges,  
4 that each of the Defendants herein gave consent to, ratified,  
5 and/or authorized the acts alleged herein of each of the  
6 remaining Defendants.

7 9. Plaintiff is an otherwise qualified disabled individual  
8 as provided in the Americans with Disabilities Act of 1990, 42  
9 USC §12102, Part 5.5 of the California Health & Safety Code and  
10 the California Unruh Civil Rights Act, §§51, et seq., 52, et  
11 seq., the California Disabled Persons Act, §§54, et seq., and  
12 other statutory measures which refer to the protection of the  
13 rights of "physically disabled persons." Plaintiff visited the  
14 public accommodation owned and/or operated by Defendants and/or  
15 located at the subject property for the purpose of availing  
16 himself of the goods, services, facilities, privileges,  
17 advantages, or accommodations operated and/or owned by Defendants  
18 and/or located on the subject property.

19 10. Plaintiff is informed and believes and thereon alleges  
20 that the subject facility has been newly constructed and/or  
21 underwent remodeling, repairs, or alterations since 1971, and  
22 that Defendants have failed to comply with California access  
23 standards which applied at the time of each such new construction  
24 and/or alteration.

### 25 III.

### 26 FACTS

27 11. Plaintiff has a mobility impairment and uses a  
28 wheelchair. Moreover, he has had a history of or has been



1 classified as having a physical impairment, as required by 42 USC  
2 §12102(2)(A).

3 12. On or about October 8, 2007 and November 26, 2007 and  
4 continuing through the present date, Plaintiff was denied full  
5 and equal access to the facilities owned and/or operated by the  
6 Defendants because the facility and/or subject property were  
7 inaccessible to members of the disabled community who use  
8 wheelchairs for mobility. Plaintiff was denied full and equal  
9 access to portions of the property because of barriers which  
10 included, but are not limited to, inaccessible path of travel,  
11 inaccessible seating and lack of an accessible parking space, as  
12 well as lack of signage for said space. Plaintiff was also  
13 denied full and equal access because of discriminatory policies  
14 and practices regarding accommodating people with disabilities.  
15 Plaintiff filed this lawsuit to compel compliance with access  
16 laws and regulations.

17 13. As a result of Defendants' failure to remove  
18 architectural barriers, Plaintiff suffered injuries. People with  
19 disabilities, because of the existing barriers, are denied full  
20 and equal access to the Defendants' facilities. The ADA has been  
21 in effect for more than 17 years. Given the vast availability of  
22 information about ADA obligations, including FREE documents which  
23 are available from the U.S. Department of Justice by calling  
24 (800) 514-0301 or at the following web sites:

25 **[www.sba.gov/ada/smbusgd.pdf](http://www.sba.gov/ada/smbusgd.pdf)**, **[www.ada.gov/taxpack.pdf](http://www.ada.gov/taxpack.pdf)** and  
26 **[www.usdoj.gov/crt/ada](http://www.usdoj.gov/crt/ada)**, the failure of Defendants to comply with  
27 their barrier removal obligations is contemptible.

28 14. Plaintiff is an otherwise qualified individual as



1 provided in the Americans with Disabilities Act or 1990, 42 USC  
2 §12102, the Rehabilitation Act of 1973, Section 504 (as amended  
3 29 USC §794) and the California Unruh Civil Rights Act, Civil  
4 Code §§51, 52, 54.1, and 54.3, and other statutory measures which  
5 refer to the protection of the rights of "physically disabled  
6 persons." Plaintiff visited the public facilities owned and  
7 operated by Defendants for the purpose of availing himself of the  
8 goods and services offered and provided by Defendants and/or for  
9 the purpose of obtaining removal of architectural barriers and/or  
10 modification of policies, practices and procedures to provide  
11 accessibility to people with disabilities. Plaintiff was injured  
12 in fact, as set forth more specifically herein.

13 15. Plaintiff alleges that Defendants will continue to  
14 operate public accommodations which are inaccessible to him and  
15 to other individuals with disabilities. Pursuant to 42 USC  
16 §12188(a), Defendants are required to remove architectural  
17 barriers to their existing facilities.

18 16. Plaintiff has no adequate remedy at law for the  
19 injuries currently being suffered in that money damages will not  
20 adequately compensate Plaintiff for the amount of harm suffered  
21 as a result of exclusion from participation in the economic and  
22 social life of this state.

23 17. Plaintiff believes that architectural barriers  
24 precluding Plaintiff full and equal access of the public  
25 accommodation will continue to exist at Plaintiff's future  
26 visits, which will result in future discrimination of Plaintiff,  
27 in violation of the Americans with Disabilities Act. Plaintiff  
28 is currently being subjected to discrimination because Plaintiff



1 cannot make use of and obtain full and equal access to the  
2 facilities, goods and/or services offered by Defendants to the  
3 general public. Plaintiff seeks damages for each offense  
4 relating to each of Plaintiff's visits to the subject property  
5 when Plaintiff was denied full and equal access to the subject  
6 property or was deterred from attempting to avail himself of the  
7 benefits, goods, services, privileges and advantages of the place  
8 of public accommodation at the subject property because of  
9 continuing barriers to full and equal access.

10 IV.

11 **FIRST CLAIM FOR**  
12 **VIOLATION OF AMERICAN WITH DISABILITIES ACT**  
**42 USC §12101, et seq.**

13 18. Plaintiff re-alleges and incorporates by reference each  
14 and every allegation contained in paragraphs 1 through 17,  
15 inclusive, as though set forth fully herein.

16 19. Plaintiff was denied full and equal access to  
17 Defendants' goods, services, facilities, privileges, advantages,  
18 or accommodations within a public accommodation owned, leased  
19 and/or operated by Defendants, in violation of 42 USC §12182(a).  
20 Plaintiff was, therefore, subjected to discrimination and is  
21 entitled to injunctive relief pursuant to 42 USC §12188 as a  
22 result of the actions or inaction of Defendants.

23 20. Among other remedies, Plaintiff seeks an injunctive  
24 order requiring compliance with state and federal access laws for  
25 all access violations which exist at the property, requiring  
26 removal of architectural barriers and other relief as the court  
27 may deem proper. Plaintiff also seeks any other order that will  
28 redress the discrimination to which he has been subjected, is



1 being subjected and/or will be subjected.

2 V.

3 SECOND CLAIM FOR  
4 VIOLATION OF CALIFORNIA CIVIL CODE

5 21. Plaintiff re-alleges and incorporates by reference each  
6 and every allegation contained in paragraphs 1 through 20,  
7 inclusive, as though set forth fully herein.

8 22. Based on the facts plead hereinabove and elsewhere in  
9 this complaint, Defendants did, and continue to, discriminate  
10 against Plaintiff and persons similarly situated by denying  
11 disabled persons full and equal access to and enjoyment of the  
12 subject facilities and of Defendants' goods, services,  
13 facilities, privileges, advantages or accommodations within a  
14 public accommodation, in violation of California Civil Code §§51,  
15 et seq., 52, et seq., and 54, et seq.

16 23. Defendants' actions constitute a violation of  
17 Plaintiff's rights under California Civil Code §§51, et seq., 52,  
18 et seq., and 54, et seq. and therefore Plaintiff is entitled to  
19 injunctive relief remedying all such violations of California  
20 access laws and standards. In addition, Plaintiff is entitled to  
21 damages under California Civil Code §54.3 for each offense. The  
22 amount of damages suffered by Plaintiff is not yet determined.  
23 When the amount is ascertained, Plaintiff will ask the Court for  
24 leave to amend this complaint to reflect this amount. Plaintiff  
25 is also entitled to and requests attorneys' fees and costs.

26 24. The actions of Defendants were and are in violation of  
27 the Unruh Civil Rights Act, California Civil Code §§51, et seq.  
28 and therefore Plaintiff is entitled to injunctive relief



1 remedying all such violations of California access laws and  
2 standards. In addition, Plaintiff is entitled to damages under  
3 California Civil Code §52 for each offense. The amount of  
4 damages suffered by Plaintiff is not yet determined. When the  
5 amount is ascertained, Plaintiff will ask the Court for leave to  
6 amend this complaint to reflect this amount.

7 25. Plaintiff seeks all of the relief available to him  
8 under Civil Code §§51, 52 et seq., 54, 54.1, 54.2, 54.3, and any  
9 other Civil Code Sections which provide relief for the  
10 discrimination suffered by Plaintiff, including damages and  
11 attorneys fees.

12 VI.

13 THIRD CLAIM FOR  
14 VIOLATION OF HEALTH AND  
SAFETY CODE §19950, ET SEQ.

15 26. Plaintiff re-alleges and incorporates by reference each  
16 and every allegation contained in paragraphs 1 through 25,  
17 inclusive, as though set forth fully herein.

18 27. Defendants' facilities are public accommodations within  
19 the meaning of Health and Safety Code §19950, et seq., and  
20 Plaintiff is informed and believes and thereon alleges that  
21 Defendants have newly built or altered the subject property  
22 and/or the subject facility since 1971 within the meaning of  
23 California Health and Safety Code §19959. The aforementioned  
24 acts and omissions of Defendants constitute a denial of equal  
25 access to the use and enjoyment of the Defendants' facilities by  
26 people with disabilities.

27 28. Defendants' failure to fulfill their duties to provide  
28 full and equal access to their facilities by people with



1 disabilities has caused Plaintiff to suffer deprivation of  
2 Plaintiff's civil rights, as well as other injuries.

3 29. As a result of Defendants' violations of Health and  
4 Safety Code §§19955, et seq., described herein, Plaintiff is  
5 entitled to and requests injunctive relief pursuant to Health and  
6 Safety Code §§19953, and to reasonable attorney's fees and costs.

7 **VII.**

8 **FOURTH CLAIM FOR DECLARATORY RELIEF**

9 30. Plaintiff re-alleges and incorporates by reference each  
10 and every allegation contained in paragraphs 1 through 29,  
11 inclusive, as though set forth fully herein.

12 31. An actual controversy now exists in that Plaintiff is  
13 informed and believes and thereon alleges that Defendants'  
14 premises are in violation of the disabled access laws of the  
15 State of California including, but not limited to, Civil Code  
16 §§51, et seq., §§52, et seq., §§54, et seq., Health and Safety  
17 Code §§19950, et seq., Government Code §§4450, et seq. and 7250,  
18 et seq., Title 24 of the California Code of Regulations, and/or  
19 Title III of the Americans with Disabilities Act and its  
20 implementing Accessibility Regulations.

21 32. A declaratory judgment is necessary and appropriate at  
22 this time so that each of the parties may know their respective  
23 rights and duties and act accordingly.

24 **VIII.**

25 **FIFTH CLAIM FOR INJUNCTIVE RELIEF**

26 33. Plaintiff re-alleges and incorporates by reference each  
27 and every allegation contained in paragraphs 1 through 32,  
28 inclusive, as though set forth fully herein.



1 34. Plaintiff will suffer irreparable harm unless  
2 Defendants are ordered to remove architectural barriers at  
3 Defendants' public accommodation, and/or to modify their policies  
4 and practices regarding accommodating people with disabilities.  
5 Plaintiff has no adequate remedy at law to redress the  
6 discriminatory conduct of Defendants.

7 35. Plaintiff seeks injunctive relief to redress  
8 Plaintiff's injuries.

9 **IX.**

10 **JURY DEMAND**

11 36. Pursuant to Rule 38 of the Federal Rules of Civil  
12 Procedure, Plaintiffs hereby request a jury trial.

13 WHEREFORE, Plaintiff prays for judgment against the  
14 Defendants, MEX-CITY, FRANCISCO CHAVEZ, CHRISTINA CHAVEZ, OLD  
15 COTIJAS and DOES 1 through 10, as follows:

- 16 1. For injunctive relief, compelling Defendants to comply  
17 with the Americans with Disabilities Act, the Unruh  
18 Civil Rights Act and the Disabled Persons Act.
- 19 2. That the Court declare the respective rights and duties  
20 of Plaintiff and Defendants as to the removal of  
21 architectural barriers at Defendants' public  
22 accommodations;
- 23 3. An order awarding Plaintiff actual, special and/or  
24 statutory damages for violation of his civil rights and  
25 for restitution including, but not limited to, damages  
26 pursuant to the applicable Civil Code Sections  
27 including, but not limited to, §§52 and 54.3 for each  
28 and every offense of Civil Code §§51 and 54;



4. An award of compensatory damages according to proof;
5. An award of up to three times the amount of actual damages pursuant to the Unruh Civil Rights Act and the Disabled Persons Act; and
6. An order awarding Plaintiff reasonable attorneys' fees and costs;
7. Such other and further relief as the Court deems proper.

DATED: May 21, 2008

LAW OFFICES OF AMY B. VANDEVELD

S/ AMY B. VANDEVELD

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